

# Notice of Allowability

Application No.

09/855,149

Examiner

Mark Fadok

Applicant(s)

SERA, YOSHINOBU

Art Unit

3625

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to BPAI decision mailed 3/27/2007.
2. ☒ The allowed claim(s) is/are 1-18.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 5/8/2007.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

## DETAILED ACTION

### *Response to Amendment*

The examiner is in receipt of applicant's amendment received 4/10/2007, which was resultant of an interview to discuss the Board of Appeals decision reversing the examiner, but identifying a USC 112 issue (see **Board of Appeals decision 2007-0389** mailed 3/23/2007). The examiner has carefully considered applicant's amendment and does not find it persuasive; therefore, the amendment filed 4/10/2007 will not be entered. However, after discussions with Mr. Soloway the following examiner's amendment is provided along with the following reasons for allowance:

### *Examiner's Amendment*

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Norman Soloway on 4/8/2007.

The following amendment is to the claims provided 12/27/2004:

Claim 14 – line 1, delete the phrase “headquarters terminal” and insert--  
network commerce system--

Line 15, delete “a”

Art Unit: 3625

Claim 15 – line 1, delete the phrase “producing/processing terminal” and insert-- network commerce system--

Line 7, delete the phrase “from an orderer” and insert--from said orderer--

Line 14, delete “a”

Claim 16 – In line 1, delete the phrase “An orderer terminal used in”

Line 8, delete the phrase “from an orderer” and insert--from said orderer--

Line 15, delete “a”

Claim 17 – In line 1, delete the phrase “A payment terminal used in”

Line 18, delete “a”

### **Reasons for Allowance**

**Claims 1-18 are allowed.**

Independent claims 1, 14-18 contain the following allowable subject matter:

As noted on page 4 of Board of Appeals decision # 2007-0389, Garfinkle does not teach inter alia, a “headquarters terminal selectively determines the producing/processing terminal according to the received order”. Each of the independent claims recite a similar feature and the independent claims are allowed for this reason.

### **Most Pertinent Art**

#### **Patents**

(i) US Patent (6,853,461) to Shiimori teaches taking orders at a central server and passing a digital image order to a store where the product is delivered. Shiimori, however, fails to render the instant claims obvious because Shiimori fails to teach that the selection of the store is done by the central server, rather Shiimori teaches that the consumer selects a store from a plurality of stores generated by the server.

(ii) US Patent (6,594,641) to Southam, teaches that if a customer chooses not to select a store, the store geographically closest to the provided mailing address will be automatically selected by the computer. Southam, however, fails to render the instant claims obvious because it does not include the order transmitted in image data form.

(iii) US Patent (4,797,818) to Cotter, teaches a central computer that automatically assigns a store based on customer data. Cotter, however, fails to render the instant claims obvious because it does not include the order transmitted in image data form.

### **Foreign Patents**

(iv) WO 0152143 to CD Warehouse, teaches taking orders and assigning an order to a store based on geographical and franchise considerations. CD Warehouse, however, fails to render the instant claims obvious because it does not include the order transmitted in image data form.

(v) EP0961451 to Shiimori teaches taking orders at a central server and passing a digital image order to a store where the product is delivered. Shiimori, however, fails to render the instant claims obvious because Shiimori fails to teach that the selection of the store is done by the central server, rather Shiimori teaches that the consumer selects a store from a plurality of stores generated by the server.

### **Non-Patent Literature**

(vi) Quikorder teaches automatically determining a store that is closest to the store that serves a customer. Quikorder, however, fails to render the instant claims obvious because it does not include the order transmitted in image data form.

Art Unit: 3625

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **571.272.6755**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Jeffrey A. Smith** can be reached on **571.272.6763**.

Any response to this action should be mailed to:

***Commissioner for Patents***

***P.O. Box 1450***

Alexandria, Va. 22313-1450

or faxed to:

**571-273-8300**

[Official communications; including

After Final communications labeled

"Box AF"]

For general questions the receptionist can be reached

at 571.272.3600

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Art Unit: 3625

Should

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Mark Fadok', followed by a long horizontal line extending to the right.

Mark Fadok

Primary Examiner